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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,773	09/04/2001	Ulrich Upmeyer	UPMEYER=4	4160
1444	7590	05/17/2006	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			BRAHAN, THOMAS J	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,773

Applicant(s)

UPMEYER, ULRICH

Examiner

Thomas J. Brahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.
2. Claims 1-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, at lines 10 and 11, it is unclear as to how the applicant considering the fork as including an actuator (8) to which detected measuring data are transmitted via a control means". Why is measuring data being sent to the actuator? What is the control means doing if it does not take the measuring data and convert them to control signals for the actuator? The actuator is only disclosed as "driven either by an electric motor or also hydraulically (sic)" see page 6, line 12. There is no disclosure of a processing means at the actuator.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless --
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirement of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.
4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1 and 3-5, as best understood, are rejected under 35 U.S.C. § 102(e) as being anticipated by Seaberg. Seaberg discloses a shelf stacking machine for storing and retrieving paper reels, which is movable in an aisle between storage positions on both sides that hold paper reels stored above one another and spaced apart in the longitudinal direction of the aisle, and has a receptacle for a paper reel, characterized in that the receptacle formed by a fork that is vertically pivotable around a horizontal axis and incorporates measuring devices (see column 3, lines 45-57) that detect the carrying load of a picked-up paper reel the receptacle further comprising an actuator (from the the clamp positions, see column 3, lines 40-42) to which detected measuring data are transmitted via a control means, the actuator being coupled to the fork to vertically pivot the fork accordance with the measuring data and into a horizontal

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position (see the last line of column 3) to hold said fork in this horizontal position during transport of the paper reels. The fork has circular shaped gripping forks, as recited in claim 3. The lower fork (the pivoting end portion on element 20; see figure 2) is fixed on a fork frame (the element 20) that is supported with its upper end in a horizontal axis, when in the orientation shown in figure 2 and actuated to pivot vertically by actuator (27), as recited in claim 4. This lower fork is suspended by a rotating ring (ring gear 16a) and a drive frame (28), as recited in claim 5

6. Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Seaberg in view of Lanza et al. Seaberg shows the basic claimed forklift sensor system, as detailed above. It uses mechanical, magnetic or optical sensors, see column 3, lines 55-57, but varies from claim 2 by not using ultrasound sensors. Lanza et al shows a similar system which uses ultrasound sensors. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the fork lift control system of Seaberg by using ultrasound sensors, as these are well known sensors common in this art, as taught by Lanza et al.

7. Claims 1 and 3-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Broersma in view of Seaberg. Broersma shows the basic claimed load handling machine. It inherently can go between aisles to shelves and can lift paper reels. It varies from the claims by not having sensors to balance the loading. Seaberg shows a similar system with a clamp with sensors to automatically position the loads. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the handling machine of Broersma by providing the clamp with a sensing system for automatic positioning of the load, as taught by Seaberg. The gripping forks of Broersma have circular arc shaped sections, as recited in claim 3, and have the horizontal pivot axis (at 27) above the fork frame, as recited in claim 4. The horizontal axis (at 27) also can be considered as the rotating ring of claim 5 that suspends the fork.

8. Claims 6-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Katherine Matecki, can be reached at (571) 272-6951. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5/15/06

Thomas J. Brahan
Primary Examiner
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